



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 210503-0095]

RIN 0648-BJ82

**Pacific Island Fisheries; Mariana Archipelago Bottomfish
Annual Catch Limits and Accountability Measures**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, NMFS implements bottomfish annual catch limits (ACL), and annual catch targets (ACT) and accountability measures (AM) to correct or mitigate any overages, for Guam and the Commonwealth of the Northern Mariana Islands (CNMI). The ACLs, ACTs, and AMs are effective for fishing years 2020-2022 in Guam, and for 2020-2023 in the CNMI. This rule also makes a minor technical correction to the regulations. This action supports the long-term sustainability of the bottomfish fisheries in the Mariana Archipelago.

DATES: This final rule is effective *[insert date 30 days after date of publication in the FEDERAL REGISTER]*. This final rule is applicable for Guam fisheries in fishing years 2020, 2021, and 2022, and for CNMI fisheries in 2020, 2021, 2022, and 2023.

ADDRESSES: Copies of the Fishery Ecosystem Plan for the Mariana Archipelago (FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808-522-8220, fax 808-522-8226, or www.wpcouncil.org.

Copies of the environmental analyses and other supporting documents for this action are available from <https://www.regulations.gov/docket?D=NOAA-NMFS-2020-0119>, or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd. Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: Mark Fox, PIRO Sustainable Fisheries, 808-725-5171.

SUPPLEMENTARY INFORMATION: NMFS is implementing ACLs and ACTs for 13 bottomfish management unit species, including emperors, snappers, groupers, and jacks, as recommended by the Council. For Guam, the ACL is 27,000 lb (12,247 kg) for each fishing year 2020-2022; there is no ACT for Guam. For the CNMI, the ACL is 84,000 lb (38,102 kg) and the ACT is 78,000 lb (35,380 kg) for each fishing year 2020-2023. The fishing year is the calendar year.

NMFS is also implementing a post-season AM to mitigate the impact on the stocks if the fishery exceeds the ACL in any given year. NMFS and the Council will monitor the catch from both areas each year. If we determine that the average catch from the previous three years exceeds the specified

ACL, we would reduce the ACL in the subsequent year by the amount of the overage through separate rulemaking. In the CNMI, if the catch exceeds the ACT but is below the ACL, we will not apply a post-season correction.

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), an ACT is an optional AM the Council may employ to reduce risk to stocks. The ACT, which is set lower than the ACL, acts as a buffer to prevent a fishery from exceeding the ACL. In this rule, if the average catch of the three most recent years exceeds the specified ACL in a fishing year, NMFS will reduce both the ACL and the ACT for the subsequent year by the amount of the overage in a separate rulemaking.

In 2019, the NMFS Pacific Islands Fisheries Science Center completed a benchmark stock assessment for Mariana bottomfish. The assessment concluded that the Guam bottomfish management unit stock complex was overfished in 2017, but not subject to overfishing. In February 2020, NMFS notified the Council of their obligations under the Magnuson-Stevens Act to rebuild the stock, and prepare and implement an FEP, FEP amendment, or proposed regulations by February 2022. Accordingly, this final rule implements ACLs for Guam through 2022, while the Council develops the necessary action to rebuild the stock.

Additional background information on this action is in the proposed rule published in the **Federal Register** on February 22, 2021 (85 FR 10526); we do not repeat it here.

Comments and Responses

On February 22, 2021, NMFS published a proposed rule, with supporting documents, and request for comments. The comment period ended on March 15, 2021. We received no comments.

Changes from the Proposed Rule

This final rule contains a minor technical change from the proposed rule. In the proposed rule, NMFS had proposed that, if the average catch of the three most recent years were to exceed the specified ACL or ACT in a fishing year, we would reduce the ACL and or ACT for the subsequent year by the amount of the overage in a separate rulemaking. The Council recommended, however, that NMFS apply a post-season AM only if the fishery exceeds the ACL. It did not include the application of an AM if the fishery exceeds only the ACT. Both the proposed rule preamble and the draft environmental assessment published with the proposed rule explained correctly that the post-season AM would apply only if the fishery exceeded the proposed ACL. NMFS received no comments on the draft proposed regulations as described in the environmental assessment.

We recognized the error in the proposed regulatory text after the comment period ended, and are correcting the

regulatory text in this final rule. Accordingly, in 50 CFR 665.408, paragraph (b) reads that if the average catch of the three most recent years exceeds a given fishing year's ACL, NMFS will reduce the ACL and ACT for the subsequent year by the amount of the overage through a separate rulemaking. This correction aligns the rule with the Council's intent. The change presents no material effect on management of the fishery. The ACT is a post-season AM that is set below the ACL, and acts as a signal and potential buffer if the fishery is approaching the ACL. The ACT does not restrict fishing during the fishing year, so exceeding the ACT does not change the ACL or restrict the fishery.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received no comments regarding this certification. As a result, a

regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 665

Accountability measures, Annual catch limits, Bottomfish, Fisheries, Fishing, Guam, Mariana Archipelago, Northern Mariana Islands, Pacific Islands.

Dated: May 3, 2021.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

PART 665 – FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Add § 665.408 to read as follows:

§ 665.408 Annual Catch Limits (ACL) and Annual Catch Targets (ACT).

(a) In accordance with § 665.4, the ACL and ACT for Guam and CNMI bottomfish MUS fisheries for each fishing year are as follows:

Table 1 to Paragraph (a)

		2020	2021	2022
Guam	ACL (1b)	27,000	27,000	27,000

Table 2 to Paragraph (a)

		2020	2021	2022	2023
CNMI	ACL (1b)	84,000	84,000	84,000	84,000
	ACT (1b)	78,000	78,000	78,000	78,000

(b) If the average catch of the three most recent years exceeds the specified ACL in a fishing year, the Regional Administrator will reduce the ACL and the ACT for the subsequent year by the amount of the overage in a separate rulemaking.